

## 22. EQUAL EMPLOYMENT OPPORTUNITY

### BASIC REQUIREMENT

The grantee must ensure that no person in the United States shall on the grounds of race, color, religion, national origin, sex, age, or physical or mental disability be excluded from participating in, or denied the benefits of, or be subject to discrimination in employment under any project, program, or activity receiving federal financial assistance from the federal transit laws. (Note: EEOC's regulation only identifies/recognizes religion and not creed as one of the protected groups.)

### AREAS TO BE EXAMINED

#### 1. *EEO Program*

- a. Designated EEO Officer
- b. Approved EEO program and updates (every three years, or as major changes occur in the work force or in employment conditions, e.g., major layoffs)
- c. Outreach Efforts
- d. LEP Provisions
- e. Alternative Formats
- f. Reasonable Accommodation
- g. Vacancy Announcement Sample to ensure the agency has an affirmative action and reasonable accommodation verbiage included in the announcements.
- h. Written Policy Statements on non-discrimination on hiring, promotion, training and other personnel-related actions that could adversely impact/affect women, minorities and persons with disabilities; policy on hostile-free work place or environment; policy on reprisal or intimidation; policy on sexual orientation; policy on reasonable accommodations to applicants and employees and policy on discrimination complaint procedures.
- i. Complaints Log and Status of Complaints

#### 2. *EEO Complaints/Lawsuits*

- a. Number and status of complaints and lawsuits alleging discrimination
- b. Complaint handling procedures

#### 3. *Workforce Utilization*

- a. EEO Goals
- b. Underutilization area
- c. Training

#### 4. *Title I of ADA*

- a. Plan in place to ensure non-discrimination in hiring and promotion
- b. Reasonable accommodation policy and reasonable accommodations made for persons with disabilities

### REFERENCES

1. [49 CFR 27](#), "Nondiscrimination On The Basis Of Disability In Programs And Activities Receiving Or Benefiting From Federal Financial Assistance."
3. [FTA Circular 4704.1](#), "Equal Employment Opportunity Program Guidelines for Grant Recipients."
4. [Federal Register](#): December 14, 2005 (Volume 70, Number 239, pp.74087-74100) "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons."

# QUESTIONS FOR THE REVIEW

1. *Has the grantee had, or been informed that it will have, an EEO Compliance Review by the FTA Office of Civil Rights? If yes, when was/will be the site visit?*

## EXPLANATION

Consistent with FTA's oversight responsibilities, FTA has initiated a program of grantee reviews assessing compliance with the EEO regulations. EEO compliance reviews assess the implementation of the EEO program in the following areas: Policy statement; dissemination of the policy; designation of personnel responsibility; utilization analysis to identify any underutilization and/or overconcentration of minorities and women; goals and timetables to correct underutilization or overconcentration; and a monitoring and reporting system to assess EEO accomplishments.

After the review is complete, the review team conducts an exit interview presenting the findings, if any, to the grantee. A draft report documenting the deficiencies and necessary corrective actions is provided to FTA within 30 calendar days of the site visit. A letter and final report is typically issued within 60 days of the site visit. The grantee then takes corrective actions and provides appropriate documentation to the Civil Rights Officer (CRO). A closeout letter is issued once the grantee has corrected all deficiencies. (Note: days are counted as calendar days.)

If an EEO Compliance Review has been conducted in the past two fiscal years or if one is scheduled for the current fiscal year, (FYs 2006, 2007, and 2008), triennial reviewers should note on the worksheets when the compliance review was performed. If findings from the EEO review are still being monitored, or if the EEO review is pending, the triennial review will not include this area. If the EEO review is closed, the reviewer should seek guidance on whether or not to conduct the review from the CRO and the Office of Civil Rights.

## REASON FOR THE QUESTION

Input to triennial review

## SOURCES OF INFORMATION

Prior to the site visit, the reviewer should contact the CRO to determine if an EEO Compliance Review is scheduled or has been conducted during the past two fiscal years. The Regional Oversight Resource Plan also may contain a schedule of EEO reviews to be held during the year.

## DETERMINATION

None

## SUGGESTED CORRECTIVE ACTION

None

2. *Who is responsible for ensuring that equal employment opportunities (EEO) obligations are fulfilled? To whom does this individual report for EEO matters? Is this a collateral duty assignment? If yes, do potential conflicts exist and how are they identified and resolved?*

## EXPLANATION

The grantee's Chief Executive Officer (CEO) should designate an EEO Officer and adequate staff to administer the EEO program. The EEO Officer should be an executive and must report directly to the CEO. Care should be taken to avoid conflicts when assigning responsibility for administering the EEO program as a collateral duty assignment, e.g., a personnel officer may have a conflict of interest.

## REASON FOR THE QUESTION

[FTA C 4704.1](#), Chapters II, Section1; Chapter III, Section 2.c

## SOURCES OF INFORMATION

EEO program submissions to the CRO may include the name and reporting relationship of the EEO Officer. This information should be updated at the site visit. The CRO should be consulted for any indications of past problems with staffing. Current staff assignments should be confirmed in discussions at the site visit. An organization chart can indicate reporting relationships. A job description for the EEO Officer can confirm responsibilities and reporting relationships.

If the EEO Officer is located in the Human Resources or Administrative Office; conflicts of interest could arise. If such an arrangement exists, grantee should be requested to provide an explanation of how such conflict of interest situations are resolved and/or handled on a day-to-day basis.

## DETERMINATION

If the grantee has designated an EEO Officer and adequate staff to administer the EEO program and there are no potential conflicts of interest with this

assignment, the grantee is not deficient. A temporary staffing problem or coordination problems among responsible offices could lead to a finding of deficient. If the EEO Officer does not report directly to the CEO, the grantee may be deficient. The determination will be partially based on the size of the grantee. Large grantees should have clear reporting relationships with no conflicts of interest. Small grantees often have limited personnel with shared roles, resulting in more latitude for enforcing this requirement.

### **SUGGESTED CORRECTIVE ACTION**

The grantee needs to designate EEO responsibilities properly. The grantee may need to change reporting relationships or assignment of responsibilities. The grantee should provide evidence of corrective actions to the regional office.

3. *Has the grantee's EEO program been approved by FTA, (if the grantee employs 50 or more transit-related employees, and if the grantee received in excess of \$1 million in capital or operating assistance or in excess of \$250,000 in planning assistance in the previous federal fiscal year)? If yes, when does the approval expire? If not, provide an explanation.*

### **EXPLANATION**

A formal EEO program is required of any grantee that both employed 50 or more transit-related employees (including temporary, full-time or part-time employees) and received in excess of \$1 million in capital or operating assistance or in excess of \$250,000 in planning assistance in the previous federal fiscal year. The program requirements detail what must be included, such as a workforce analysis (including an identification of areas of underutilization), goals and timetables, an assessment of past employment practices and proposed remedies for problem areas, and a monitoring and reporting system. Program updates are required every three years.

**Note:** Employees are not counted in the aggregate. The requirement applies to any single employer of 50 or more transit-related employees. For example, if a city (receiving over \$1 million in FTA funds) with 10 transit-related employees contracts with a private provider who employs 40 transit-related employees, then neither the city nor the contractor is required to have a formal EEO Program. However, if the city (the grantee) exceeds both thresholds, then the grantee would be required to submit a formal EEO Program to FTA. If the contractor employs 50 or more transit-related employees, the grantee should ensure that the contractor submits a formal EEO Program to them for

review and approval. In some circumstances, the CRO may require that the grantees submit the EEO program of a contractor that meets this threshold for review. If the grantee has a contractor that meets the employee threshold, seek additional guidance from the CRO on the submittal of their program.

### **REASON FOR THE QUESTION**

[FTA C 4704.1](#), Chapter II, Section 2 and 5; Chapter III

### **SOURCES OF INFORMATION**

The CRO's files should include a copy of the most recently submitted program. Correspondence should indicate when it was approved by FTA and when the approval expires. The grantee's files should include a copy of the EEO Program of its contractor(s) who meet the threshold.

### **DETERMINATION**

If a current EEO program has been submitted and approved, the grantee is not deficient. If the current EEO program has expired and the grantee has not submitted a program update or requested and received an extension for submitting a new program, the grantee is deficient.

### **SUGGESTED CORRECTIVE ACTION**

The grantee needs to submit the required EEO program or program update to the regional office.

4. *Has FTA placed any conditions on the EEO program approval? If yes, what is the status of the corrective actions?*

### **EXPLANATION**

In reviewing the grantee's EEO program, the CRO may have issued a conditional approval and identified corrective actions that need to be taken. Corrective actions may be required in cases where FTA has determined that a grantee is deficient or is in probable deficiency with the requirements of [FTA C 4704.1](#).

### **REASON FOR THE QUESTION**

[FTA C 4704.1](#), Chapters III; IV

### **SOURCES OF INFORMATION**

The CRO's files should include documentation of any corrective action that is required of grantees. During the site visit, discuss the status of any outstanding items that require corrective action.

### **DETERMINATION**

If the grantee has completed all corrective actions, the grantee is not deficient. If the grantee has not completed all corrective actions as scheduled, the grantee is deficient.

### **SUGGESTED CORRECTIVE ACTION**

The grantee needs to take steps to complete corrective actions within 60 calendar days and provide evidence of such to the regional office.

5. *Please provide a summary of EEO complaints, both formal and informal, filed during the past three years. How are these complaints addressed?*

### **EXPLANATION**

Under Title VII of the Civil Rights Act of 1964, employees and applicants have the right to file complaints alleging discrimination on the basis of race, color, religion, national origin, sex, age, or physical or mental disability, or reprisal. Sexual orientation is a form of discrimination and such complaint should be processed through the agency's administrative grievance process. The grantee should have sufficient staff and procedures to handle such complaints appropriately and to respond in a timely manner.

### **REASON FOR THE QUESTION**

[FTA C 4704.1](#), Chapter III, Section 2; Chapter VI

### **SOURCES OF INFORMATION**

Information regarding complaints may be obtained from headquarters, the CRO, or the grantee. A listing of all complaints during the past three years and the disposition of such complaints should be made available at the site visit.

### **DETERMINATION**

If the grantee has documentation indicating that any complaints received are being addressed, the grantee is not deficient. If no complaints have been received but the grantee provides a satisfactory explanation of how complaints would be processed, the grantee is not deficient. (There is no specific requirement that there be a written complaint handling process.) If complaints indicate that the grantee is violating EEO program regulations or if the grantee does not respond to complaints, the grantee is deficient.

### **SUGGESTED CORRECTIVE ACTION**

The grantee needs to develop and implement procedures for handling EEO complaints and submit these procedures to the regional office. Outstanding complaints should be addressed.

6. *If applicable, were EEO goals met during the past three years? What are the grantee's current areas of underutilization? What is the grantee*

*doing to address this underutilization (e.g., outreach programs)?*

### **EXPLANATION**

Goals and timetables are management tools to assist in the optimum utilization of human resources. For grantees that meet the formal program threshold, specific and detailed percentage and numerical goals with timetables must be set to correct any underutilization of specific affected classes of persons identified in a workforce utilization analysis. Grantees must conduct a detailed assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization. Barriers can include not having employment material available for persons with limited English proficiency. Grantees should have outreach efforts to populations that are underrepresented.

### **REASON FOR THE QUESTION**

[FTA C 4704.1](#), Chapter III, Sections 2.d; e; f; and g  
[Federal Register: December 14, 2005 \(Volume 70, Number 239, pp. 74087-74100\)](#)

### **SOURCES OF INFORMATION**

The grantee's EEO program update should contain current information on the EEO goals and areas of underutilization. At the site visit, the grantee should provide employment material, examples of actions taken to accommodate persons with disabilities and persons with LEP, and a copy of the most recent workforce utilization analysis to show progress toward meeting EEO program goals. Discussions should be held with the grantee on its current efforts to not discriminate in its employment practices (including outreach) and to resolve any situations of underutilization.

### **DETERMINATION**

If the grantee has approved EEO goals and is making satisfactory progress toward current year goals, the grantee is not deficient. If the grantee has not met its prior year goals, but it has outreach efforts in place to address areas of underutilization, the grantee is not deficient. If prior year goals were not attained and a satisfactory explanation cannot be provided, or the grantee did not have adequate procedures including outreach, the grantee is deficient.

### **SUGGESTED CORRECTIVE ACTION**

The grantee needs to develop a plan to meet its EEO goals, including a detailed assessment of present employment practices to identify those practices that operate as employment barriers and unjustifiably contribute to underutilization, and submit the plan to the regional office. Develop and implement an outreach program and report to FTA on both efforts.

7. *Does the grantee's program ensure non-discrimination for ADA-eligible persons in terms of employment? Does the grantee have a policy and procedures for making reasonable accommodations for persons with disabilities? If requested, did the grantee make reasonable accommodations for persons with disabilities during the past three years, in accordance with Title I of the ADA? If so, please describe.*

#### **EXPLANATION**

Grantees are required to not discriminate against persons with disabilities. Discriminatory acts include, but are not limited to, denying a person the opportunity for participation in or the benefit of a program and limiting, for a qualified person with physical or mental disability, the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

Grantees are required to not discriminate in employment and to make reasonable accommodations for qualified candidates with disabilities hired by the grantee. Such accommodations could include modifications to telephone systems, computers, office furniture, etc.

#### **REASON FOR THE QUESTION**

[49 CFR 27.7](#)

[49 CFR 27.19](#)

#### **SOURCES OF INFORMATION**

At the site visit, the grantee should identify its employment program and efforts to employ persons with disabilities. They should also indicate if any persons with disabilities that have been employed in the past three years have requested reasonable accommodations. The grantee should describe reasonable accommodations made for qualified employees.

#### **DETERMINATION**

If the grantee has a program that does not discriminate, employs persons with disabilities, and makes reasonable accommodations, the grantee is not deficient. If the grantee has no process for making reasonable accommodations for persons with disabilities, the grantee is deficient.

#### **SUGGESTED CORRECTIVE ACTION**

The grantee needs to develop a process for making reasonable accommodations for persons with disabilities and submit evidence of such to the CRO.